Supreme Court, U.S.
FILED

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No. _____ OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2001

MARTIN McCAULEY,
Petitioner

v.

COMMONWEALTH OF MASSACHUSETTS,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

PETITION FOR WRIT OF CERTIORARI

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13 pp

QUESTION PRESENTED FOR REVIEW

1. When a state court permits a defendant to file a motion for new trial as of right and to appeal (here, to a Single Justice of the state's highest court) the denial of that motion by the trial court, can post-conviction relief be denied without any written explanation or findings of any kind without violating the defendant's federal due process rights?

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OPINIONS BELOW

The petitioner Martin McCauley was tried in Norfolk County, Massachusetts, before a jury and the Honorable Judge Alberti. The jury returned convictions on March 23, 1982, for first degree murder, two counts of armed robbery, and unlawful carrying of a firearm. The convictions were affirmed by the Supreme Judicial Court. *Commonwealth v. McCauley,* 391 Mass. 697, 464 N.E.2d 50 (1984).

Martin McCauley filed the motion for new trial at issue here in the state Superior Court on February 19, 1999. The motion was assigned to a different Superior Court judge since the trial judge was retired. On September 19, 2000, the Honorable Judge Spurlock denied the motion in an unpublished decision without a hearing and without any written explanation or findings of any kind. A copy of that decision is reproduced herein in the Appendix at A-1. The petitioner, pursuant to state procedural requirements, sought leave to appeal the denial of his motion from the Single Justice of the Supreme Judicial Court. The Honorable Justice Greaney denied leave to appeal in an unpublished order, reproduced herein in the Appendix at A-2.

JURISDICTION

The judgment of the Single Justice of the Supreme Judicial Court was entered on July 13, 2001. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(a).

THE CONSTITUTIONAL PROVISION INVOLVED

Fourteenth Amendment, United States Constitution

....No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United

States; nor shall any State depr[illegible]any person of life, liberty, or property, without due process [illegible]w; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The petitioner's motion for new trial contained several substantial issues, including a claim of ineffective assistance of counsel and a claim based on the reasonable doubt charge to the jury. The theory of those two claims is briefly summarized here.

A. Ineffective Assistance.

In the case at bar, trial counsel must have realized that his client's statement was the most significant evidence in the Commonwealth's case. He filed a motion to suppress and obtained an evidentiary hearing, but he failed to either interview or call Detective Paul Murphy. At trial, that detective's testimony corroborated his client's claims about being induced to speak by a promise of leniency. The failure to produce this officer at the motion to suppress hearing is inexplicable. The basic safeguard protecting the accused from the exploitation of an unconstitutionally obtained statement is the trial court's voir dire role; there is an inherent prejudice in asking a jury to consider the voluntariness issue since the jury will inescapably consider the statement's reliability. It was ineffective assistance not to have made this officer available to the motion judge. But assuming *arguendo* some mythical tactical reason for failing to do so, there is no rational explanation for the failure to request a second voir dire from the trial judge after Detective Paul Murphy's testimony.

Equally inexplicable was trial counsel's defense at trial. He offered a defense to the premeditation theory of murder, accident. But despite the trial court's expressed view that accident did not impact on felony-murder, and the case law

clearly supporting the trial judge's view, *see Commonwealth v. Devereaux*, 256 Mass. 387, 392-94, 152 N.E. 380, 382-84 (1926), trial counsel persisted in raising only accident as a defense to felony-murder. In effect, he pled the defendant guilty to felony-murder. *See* and *compare* this case with *Francis v. Spraggins*, 720 F.2d 1190 (11th Cir. 1983), *cert. denied*, 470 U.S. 1059 (1985).

B. Reasonable Doubt Charge.

The reasonable doubt charge created a probability flow chart that diluted the Commonwealth's burden. Suspicion and conjecture were not enough. Equally poised views of the evidence were not enough. A mere slight tipping of the scales in favor of guilt was not enough. However, a reasonable construction of the evidence leading to guilt could not be ignored and a just and reasonable conclusion of guilt was sufficient. This was serious error, and a new trial is necessary. *See* and *compare* this case with *United States v. Khan*, 821 F.2d 90, 92-93 (2d Cir. 1987)(what is jury to do when the inference of guilt is stronger than the inference of innocence, but not strong enough to be beyond a reasonable doubt), and *United States v. Merlos*, 984 F.2d 1239 (D.C. Cir. 1993)(equating strong belief in defendant's guilt with proof beyond a reasonable doubt not acceptable).

Neither the Superior Court nor the Single Justice addressed the merits of the petitioner's claims in any way other than to say they should be denied. Thus, the petitioner, who had a right under state law to file a motion for new trial and to appeal the denial of that motion, never received one word of explanation for the state court decisions.

It is the petitioner's contention that the combined effect of the actions of the trial and appellate court violated his Fourteenth Amendment rights to due process. The petitioner was not in a position to raise this constitutional argument in the

state courts because this argument was not available until after the state court's final decision denying his appeal.

REASONS WHY THE WRIT SHOULD BE GRANTED

I. ADDRESSING ISSUES RAISED IN AUTHORIZED STATE POST-CONVICTION PROCEEDINGS.

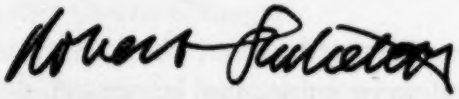
As discussed earlier, Martin McCauley's motion for new trial raised some substantial issues that were far from frivolous and that were worthy of judicial review. The Commonwealth of Massachusetts granted him the right to file and appeal (in this case, to a Single Justice) one post-conviction motion for new trial.

If the right to file and appeal a motion for new trial is to mean something, the state courts should at least address the issues raised. Even if an issue is simply dismissed with little explication, it has been addressed and the basic judicial function served. But when a serious issue is simply ignored, an appeal becomes a "meaningless ritual". *See Douglas v. California,* 372 U.S. 353, 358 (1963)(state that affords appeal must make that appeal more than a meaningless ritual by supplying indigent defendant with counsel). Due process requires more than a meaningless ritual when a jurisdiction provides the right to post-conviction relief. *But see Mainiero v. Johnson,* 105 F.3d 361 (7th Cir.), *cert. denied,* 470 U.S. 1059 (1997).

CONCLUSION

For all the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,
By his attorney,



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9-19-2000

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

Supreme Judicial Court
For Suffolk County
No. SJ-2001-0087

MARTIN McCAULEY

vs.

COMMONWEALTH

MEMORANDUM AND ORDER

I have reviewed the papers in this case and considered the arguments of counsel. After applying the standard applicable to a gatekeeper petition brought pursuant to G. L. c. 278, § 33E, I conclude that the defendant's application for leave to appeal from the denial of his motion for new trial should be, and hereby is, denied.

By the Court (Greaney, J.).

Assistant Clerk

Entered: July 13, 2001